

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
JAMES BONINI
CLERK

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ASHLAND, INC.,

Plaintiff and Counter-Defendant,

v.

ACHIEVER BUSINESS SOLUTIONS
INC.,

Defendant.

and

ACHIEVER BUSINESS SOLUTIONS
LTD.,

Defendant, Counter-Plaintiff and
Third Party Plaintiff,

v.

AIR PRODUCTS AND CHEMICALS, INC.
7201 Hamilton Boulevard
Allentown, PA 18195

Third Party Defendant.

Case No. 2:05cv247

Judge Frost

Magistrate Judge Abel

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

COUNTERCLAIM AND THIRD PARTY COMPLAINT
FOR INJUNCTIVE AND OTHER RELIEF

Counter-Plaintiff, Achiever Business Solutions Ltd. ("Achiever"), by and through its undersigned attorneys, for its counter-claim against Counter-Defendant Ashland, Inc. and Air Products and Chemicals, Inc., upon information and belief alleges as follows:

Introduction

1. Ashland, Inc. and Air Products and Chemicals, Inc. are copyright infringers. They are infringing upon Achiever Business Solutions Ltd.'s copyrighted interest in the work known as Achiever Plus, a software product.

Parties

2. Achiever Business Solutions Ltd. ("Achiever") is a corporation organized under the laws of the United Kingdom with its principal place of business at Cross & Pillory House, Cross & Pillory Lane, Alton, Hampshire GU34 1HL, United Kingdom. Achiever owns and sells licenses for use of a software product commonly known as Achiever Plus.
3. Ashland Inc. ("Ashland") is a corporation organized under the laws of the Commonwealth of Kentucky with its principal place of business located at 50 E. RiverCenter Blvd., Covington, Kentucky 41012. Ashland owns and operates a division now known as Ashland Specialty Chemical Company and formerly known as Ashland Chemical Company.
4. Air Products and Chemicals, Inc. ("Air Products") is a corporation organized under the laws of the State of Delaware with its principal place of business located at 7201 Hamilton Blvd., Allentown, Pennsylvania 18195.

Jurisdiction and Venue

5. This counterclaim is for copyright infringement brought under the Copyright Act of 1976, 17 U.S.C. §101 *et seq.* Jurisdiction is predicated upon 28 U.S.C. §§1331 and 1338(a). Venue is proper under 28 U.S.C. §§1391(b) and (c) and 1400.

6. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331 and §1338(a).
7. This Court has personal jurisdiction over each of the Defendants inasmuch as they regularly engage in commerce in the State of Ohio.
8. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b), (d).

Facts

9. Although both Ashland's and Air Products' use of Achiever Plus is widespread, neither of them has a license authorizing its use or is otherwise entitled to use that software.
10. Although Ashland was once a licensed user of Achiever Plus, its license expired June 10, 2001. Any use of Achiever Plus by Ashland occurring after that date has been unauthorized and unlawful.
11. Air Products has never purchased a license to use Achiever Plus. Any use of Achiever Plus by Air Products at any time has been unauthorized and unlawful.
12. Ashland acquired a limited right to use Achiever Plus in 1996. Ashland prepared and delivered to Achiever a Purchase Order, dated January 23, 1996, reflecting its desire to purchase a license to use the Achiever Plus software. A copy of Ashland's Purchase Order is attached as Exhibit 1.
13. On June 10, 1996, Ashland executed a License Agreement reflecting the terms for its use of Achiever Plus. A copy of the License Agreement is attached as Exhibit 2.
14. The License Agreement authorized Ashland to utilize Achiever Plus for a limited time and on a limited number of workstations.
15. The License Agreement included a five-year term, which expired on June 10, 2001.

16. The License Agreement authorized Ashland to utilize Achiever Plus only on workstations owned and operated by Ashland Chemical Company (now known as Ashland Specialty Chemical Company), a division of Ashland, and any acquisitions made by Ashland Specialty Chemical Company.
17. During the term of the License Agreement, Ashland's use of Achiever Plus exceeded the permissible scope. Ashland deployed Achiever Plus on workstations other than those owned and operated by Ashland Chemical. Ashland's use of Achiever Plus beyond the scope described in the License Agreement was unauthorized and in breach of the License Agreement. Furthermore, Ashland's unauthorized use of Achiever Plus violated copyright law.
18. During the term of the License Agreement, Ashland made modifications to Achiever Plus.
19. Many of the modifications made to Achiever Plus by Ashland were made without Achiever's knowledge, consent or involvement. All such modifications were unauthorized and in breach of the License Agreement. Furthermore, all such modifications violated copyright law.
20. Without authorization and in direct contravention of copyright law, Ashland has continued to use Achiever Plus even after the expiration of the License Agreement.
21. Ashland has knowingly and willfully violated Achiever's copyrighted interest in the work known as Achiever Plus.
22. Ashland's unauthorized and unlawful use of Achiever Plus is and has been widespread.

23. Ashland operates business units and employs approximately 22,000 people in more than 120 countries. Ashland uses Achiever Plus throughout all of its business units.
24. Without authorization and in violation of copyright law, Ashland provided Air Products with a copy of Achiever Plus.
25. Ashland sold Ashland Specialty Chemical Company's Electronic Chemicals business to Air Products on August 29, 2003. The Achiever Plus software was among the assets that Ashland attempted to transfer to Air Products as a part of this transaction. Although Ashland released a copy of Achiever Plus to Air Products, it did so unlawfully. Ashland did not have any right, title, or interest in Achiever Plus. Air Products' possession and use of Achiever Plus is unauthorized and unlawful.
26. Air Products' unauthorized and unlawful use of Achiever Plus is and has been widespread. Air Products employs more than 17,000 people in over 30 countries. Air Products uses Achiever Plus throughout its operations.

COUNT I

COPYRIGHT INFRINGEMENT

27. Achiever restates and incorporates each of the preceding paragraphs as if fully set forth herein.
28. In late 2004, Achiever discovered that Ashland, Inc. had infringed Achiever's copyright in the Achiever Plus software by continuing to utilize Achiever Plus beyond the expiration of the term of its license.
29. Ashland, Inc.'s continued use of Achiever Plus was done without the knowledge or acquiescence of Achiever.

30. Ashland, Inc.'s infringement of Achiever's copyright in the Achiever Plus has continued from June 10, 2001 to the present.

31. Achiever has sustained irreparable harm and economic injury as a result of Ashland's infringement.

COUNT II
COPYRIGHT INFRINGEMENT

32. Achiever restates and incorporates each of the preceding paragraphs as if fully set forth herein.

33. In 2004, Achiever discovered that Air Products had infringed upon Achiever's copyright in the Achiever Plus software by utilizing Achiever Plus without the benefit of a license or any other right of use.

34. Air Products' use of Achiever Plus was done without the knowledge or acquiescence of Achiever.

35. Air Products' infringement of Achiever's copyright in the Achiever Plus has continued from approximately August 29, 2003 to the present.

36. Achiever has sustained irreparable harm and economic injury as a result of Air Products' infringement.

COUNT III
BREACH OF CONTRACT

37. Achiever restates and incorporates each of the preceding paragraphs as if fully set forth herein.

38. Ashland's use of Achiever Plus beyond the scope of use described in the License Agreement was unauthorized and in breach of the License Agreement.

39. Ashland also made modifications to Achiever Plus by Ashland without Achiever's knowledge, consent or involvement. All such modifications were unauthorized and in breach of the License Agreement.

40. Achiever has sustained economic injury as a result of Ashland's breaches.

WHEREFORE, Counter-Plaintiff, Achiever Business Solutions Ltd., prays for findings of copyright infringement and judgment in its favor and against Counter-Defendant, Ashland, Inc. and Air Products and Chemicals, Inc. as follows:

(1) Ashland, Inc. and Air Products and Chemicals, Inc. may not implement or otherwise use the Achiever Plus software unless and until it executes a license agreement with Achiever Business Solutions Ltd. specifically permitting them to do so;

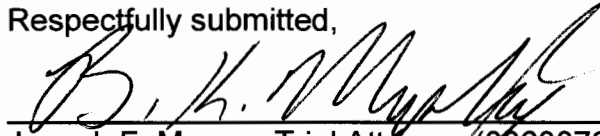
(2) Ashland, Inc. and Air Products and Chemicals, Inc. must immediately cease using and de-install all elements of the Achiever Plus software;

(3) Ashland, Inc. and Air Products and Chemicals, Inc. must be required to pay Achiever Business Solutions Ltd. such actual damages as Achiever Business Solutions Ltd. has sustained in consequence of Ashland, Inc.'s and Air Products and Chemicals, Inc.'s infringements and to account for all gains, profits, and advantages derived by Ashland, Inc. and Air Products and Chemicals, Inc. therefrom, or such statutory damages for all infringements and wrongs as shall appear proper within the provisions of the copyright laws; and

(4) the Court grant such other and further relief as is reasonable to remedy Ashland, Inc. and Air Products and Chemicals, Inc.'s wrongful acts by any means, either at law or in equity, including injunction.

ADDITIONALLY, Achiever Business Solutions Ltd. seeks a preliminary injunction compelling Ashland, Inc. and Air Products and Chemicals, Inc. to return to the *status quo ante* by immediately desisting from using the Achiever Plus software and by removing the Achiever Plus software from their systems and all of its employees' workstations.

Respectfully submitted,



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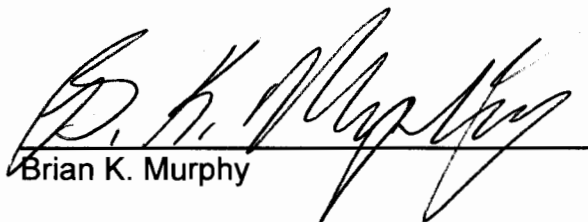
Facsimile: 6124.488.0401

Attorneys for Achiever Business Solutions Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2005, the foregoing was electronically filed with the Clerk of Courts via the CM/ECF System, which will send notification of such filing to the following:

Thomas W. Humphrey
Bruce Tittel
John Paul Davis
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Brian K. Murphy